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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/791,020      | 03/01/2004  | Thomas Walton McNutt | P0316               | 1280             |

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EXAMINER

STORMER, RUSSELL D

ART UNIT PAPER NUMBER

3617

DATE MAILED: 03/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                                       |                                      |  |
|------------------------------|---------------------------------------|--------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/791,020  | <b>Applicant(s)</b><br>MCNUTT ET AL. |  |
|                              | <b>Examiner</b><br>Russell D. Stormer | <b>Art Unit</b><br>3617              |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 October 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                            | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

***Oath/Declaration***

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not state that the person making the oath or declaration believes the named inventors to be the original, first, and *joint* inventors of the subject matter which is claimed and for which a patent is sought.

Although two inventors are named, the declaration states in line 3 that there is only one original, first, and sole inventor.

The oath or declaration is also defective because:

The claiming of the benefit of the filing date of the earlier applications SN 10/313877 and 10/679003 under 35 USC 119 is improper. Benefit should be claimed under 35 USC 120.

***Drawings***

2. The drawings are objected to because figure 10, as described in the Brief description of the invention, has not been included in the drawings. Further, the drawings contain a figure 16 not described in the specification.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet,

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and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

3. The disclosure is objected to because of the following informalities:

The status of the 10/313877 and the 10/607033 applications referred to in the first paragraph must be updated.

Note that the reference to 35 USC 119 is incorrect.

Appropriate correction is required.

4. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter.

There is no description of the flexible tracks having permanently mounted cleats as set forth in claims 1 and 10.

See 37 CFR 1.75(d)(1) and MPEP § 608.01(o).

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-3, and 10-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Moore.

The traction grousers 24 are mounted to the track by a selectively releasable mechanical attachment assembly 33 in what are considered to be clean-out holes 22. Note the permanently mounted cleats 20.

7. Claims 1-4 and 10-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Wadsworth et al.

The traction grousers are mounted to the tracks in clean-out holes by selectively releasable mechanical attachment members as shown in figures 2, 3, 4, and 5. Note the permanently mounted cleats 30.

8. Claims 1-5, 7, 8, 10-14, 16, 18, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Cackley et al.

Cackley et al (previously cited; newly applied) shows detachable grousers 30 having raised traction elements 31a-g removably attached to a flexible track, the track including permanently mounted cleats 32.

The holes through the cleats are mounted are considered to be clean-out holes as such as broadly recited in the claims.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-4, 7, 8, 10-14, 18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boggs et al in view of Guha et al.

The grouser members of Boggs et al include a traction member 20 and a mounting plate 23, and securing members (bolts, unlabelled) which extend through clean-out holes in the track. The traction member 20 does not include a cork member or cork element.

Guha et al teaches the use of cork in a traction member as a filler for the member. See lines 3-13 of column 5. From this teaching it would have been obvious to use cork in the traction member 20 of Boggs et al in order to lighten the member or function as a filler. The traction member would then comprise a cork member.

11. Claims 9 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boggs et al in view of Guha et al as applied to claims 8 and 19 above, and further in view of Yoshimura et al.

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For the grouser to include a traction-enhancing such as spiral grooves would have been obvious as taught by Yoshimura et al (newly cited). Note the spiral shaped grooves or sipes 25.

12. Claims 6 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cackley et al in view of Rollinson.

The cleats of Cackley et al are shown to be in several shapes, but none of the shapes appears to be a chevron shape.

For the raised traction elements of Cackley et al to be in the form of a chevron shape would have been obvious as taught by Rollinson as such a chevron shape is well-known in the art to provide exceptional traction both longitudinally and laterally.

### ***Response to Arguments***

13. Applicant's arguments with respect to claims 1 and 10 have been considered but are moot in view of the new grounds of rejection.

The addition of the limitation of the permanently mounted cleats required some of the rejections to be changed.

Contrary to Applicants' arguments, references such as Moore, Wadsworth et al, and Boggs et al do have permanently mounted cleat.

Statements made in the Response are sufficient to overcome the rejection under 35 USC 102(f).

***Conclusion***

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Russell D. Stormer whose telephone number is (571) 272-6687. The examiner can normally be reached on Monday through Friday, 9 AM to 4 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joe Morano can be reached on (571) 272-6684. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

3/6/06

  
RUSSELL D. STORMER 3/6/06  
PRIMARY EXAMINER